IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Bharat Singh & ors. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 795/2001
against the order dated 6-10-2001 passed
by the Additional Sessions Judge No.2, Bikaner
in Criminal Revision No. 20/2001.

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Date of Order: August 24, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. A.K. Singh, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 6.10.2001 passed by the Additional Sessions Judge No.2, Bikaner (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 20/2001, whereby the the revision petition filed by the petitioners against the order dated 4-12-2000 passed by the Additional Judicial Magistrate No.2, Bikaner in Criminal Case No. 9/2000, was dismissed.

I have heard learned counsel for the petitioners and the Public Prosecutor for the State. Carefully gone through the

orders passed by the trial Court as well as the Revisional Court.

On a report lodged by the villagers, namely Jetha Ram and others, the police registered a crime report, investigated the matter and filed Challan against the petitioners for the offences under Sections 188 and 379 IPC. The trial Court refused to take cognizance for the offence under Section 188 IPC on the ground that the provision is hit by Section 195 of the Code, however, took cognizance of the offence under Section 379 IPC against the petitioners. The petitioners preferred revision petition against the order of the trial Court, however, it was unsuccessful and the revision petition was dismissed.

It is contended by the learned counsel for petitioners that the land in dispute, which was being cultivated by the petitioners themselves as they are temporary cultivators having the temporary cultivation permit, cultivated the land for last sixty years and on the relevant year, i.e. 28-7-1997, the petitioners were in possession of the land in dispute and cultivated the land by sowing the crop of ground-nuts as they were in possession of the land. However, the proceedings under Section 145 and 146 of the Code were initiated by the order of the Sub-Divisional Officer (North), Bikaner. That order came to be challenged by the petitioners before the Revisional Court, however, the Revisional Court did not interfere with the order of the trial Court and the matter was challenged before this Court by filing S.B.

Criminal Miscellaneous Petition No. 552/1997. By the order dated 8-2-1998, this Court quashed the proceedings under Sections 145 and 146 of the Code and the land remained in the possession of the present petitioners. Though there was an order of the Sub-Divisional Magistrate for attaching the land and appointment of the Tehsildar as the Receiver, but the land never went to the hands of the Receiver appointed by the S.D.M. Be that as it may, this Court, vide order dated 8-2-1998, quashed the proceedings under Sections 145 and 146 of the Code and the land even if went to the hands of the Receiver, it is alleged to be in the possession of the petitioners. From the orders of the courts below, it is more than clear that the crop standing on the field in dispute was cultivated by the present petitioner and if at all after quashing the proceedings, the fruits of the crop was taken by the petitioners, it does not amount to an offence of theft. In my view, no useful purpose would be served by allowing such proceedings to continue which ultimately deserves to be culminated in favour of the petitioners. In order to meet the ends of justice, the petition deserves to be allowed and the order passed by the trial Court and affirmed by the Revisional Court are liable to be set aside.

The criminal miscellaneous petition is allowed. The orders impugned passed by the courts below are set aside and the criminal proceedings pending against the petitioners in

Criminal Case No. 9/2000 before the trial Court are quashed. The petitioners are on bail and the bail bonds are discharged.

(H.R. PANWAR), J.

mcs